



6351-01-P

## **COMMODITY FUTURES TRADING COMMISSION**

### **Agency Information Collection Activities Under OMB Review**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (“PRA”), this notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Management and Budget (“OMB”) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (“OIRA”) in OMB, within 30 days of the notice’s publication, by either of the following methods. Please identify the comments by OMB Control No. 3038-0075.

- By email addressed to: [OIRAsubmissions@omb.eop.gov](mailto:OIRAsubmissions@omb.eop.gov); or
- By mail addressed to: Office of Information and Regulatory Affairs, Office of

Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street, NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (“CFTC” or “Commission”) by either of the following methods. The copies should refer to OMB Control No. 3038-0075.

- By submission through the Commission’s website: <http://comments.cftc.gov>.

Please follow the instructions for submitting comments through the website;

- By mail addressed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; or

- By hand delivery/courier to: the address listed above for submission my mail.

**FOR FURTHER INFORMATION CONTACT:** Gregory Scopino, Special Counsel, 202-418-5175, e-mail: [gscopino@cftc.gov](mailto:gscopino@cftc.gov), CFTC Division of Swap Dealer and Intermediary Oversight.

**SUPPLEMENTARY INFORMATION:**

*Supporting statements.* A copy of the supporting statements for the collection of information discussed herein may be obtained by visiting <http://RegInfo.gov>.

*Comment instructions.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations, 17 CFR 145.9. The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter,

redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

*Title:* Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy (OMB Control No. 3038-0075). This is a request for an extension of a currently approved information collection.

*Abstract:* On November 6, 2013, the Commission issued final rules implementing statutory provisions pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and imposing requirements on swap dealers (“SD”) and major swap participants (“MSP”) with respect to the treatment of collateral posted by their counterparties to margin, guarantee, or secure uncleared swaps.<sup>1</sup> Additionally, the final rule includes revisions to ensure that, for purposes of subchapter IV of chapter 7 of the Bankruptcy Code, securities held in a portfolio margining account that is a futures account or a Cleared Swaps Customer Account constitute “customer property”; and owners of such accounts constitute “customers.”<sup>2</sup> Section 4s(1) of the Commodity Exchange Act (“CEA”) sets forth certain requirements concerning the rights of counterparties of SDs and MSPs with respect to the segregation of money, securities, or other property used to margin, guarantee, or otherwise secure uncleared swaps.

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<sup>1</sup> 78 FR 66621 (Nov. 6, 2013).

<sup>2</sup> *Id.*

Section 23.701 of the Commission’s regulations implements part of the new statutory requirements by specifying that certain information must be provided to counterparties about the terms and conditions of segregation, including price information, to the extent that the SD or MSP has such information, and the identity of one or more independent depositories for segregated collateral. Section 23.704 implements the requirements of CEA section 4s(l)(4), which dictates that, in certain circumstances, an SD or MSP must report to the counterparty, on a quarterly basis, “that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”

As discussed above, the rules establish reporting and recordkeeping requirements that are mandated by section 4s(l) of the CEA, which states that SDs and MSPs must notify their counterparties of the right to have their initial margin segregated and to maintain the confirmations and elections related to such notices as business records. The reporting and recordkeeping requirements are necessary to implement the objectives of section 4s(1). For example, the information received by uncleared swap counterparties pursuant to § 23.701 of the Commission’s regulations would alert counterparties to their statutory right, if they so choose, to have funds or property used as margin in uncleared swaps transactions with SDs and MSPs kept segregated from the property of the SD or MSP. Likewise, the information provided would further alert counterparties of the need to request such segregation if they wish to exercise this right. Similarly, the information received by uncleared swap counterparties pursuant to § 23.704 would be used to confirm that the back office procedures followed by a SD or MSP with whom they are dealing comply with the agreement of the parties. On May 12, 2017, the Commission published

in the *Federal Register* a notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension. *See* 82 FR 22118 (May 12, 2017). The Commission received no relevant comments.

*Burden Statement:* The Commission is revising its estimate of the burden for this collection to reflect the current number of registered SDs and MSPs. Accordingly, the respondent burden for this collection is estimated to be as follows:

*Number of Registrants:* 102

*Estimated Average Burden Hours Per Registrant:* 3406

*Estimated Aggregate Burden Hours:* 347,412

*Frequency of Recordkeeping:* As applicable.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: July 24, 2017

Christopher J. Kirkpatrick,  
Secretary of the Commission.

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